

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

MIRTA NEGRETE	§	CIVIL ACTION
Plaintiff	§	
	§	
VS.	§	NO. 1:17-CV-370
	§	
WALMART STORES TEXAS, L.L.C.	§	
Defendant	§	JURY

DEFENDANT'S NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW DEFENDANT, WALMART STORES TEXAS, LLC, in accordance with 28 U.S.C. §§ 1332, 1441, and 1446 *et seq.*, and files its Notice of Removal of the above-styled case from the 172nd Judicial District Court of Jefferson County, Texas, to the United States District Court for the Eastern District of Texas, Beaumont Division, based on diversity of citizenship of the parties.

Pursuant to the applicable federal statutes and the Local Rules for the Eastern District of Texas, Defendant attaches the following documents in support of this Notice of Removal:

1. Attachment A - State Court Petition;
2. Attachment B - Citation of Service and Notice of Service of Process on Walmart Stores Texas, LLC;
3. Attachment C - Defendant Walmart Stores Texas, LLC's State Court Answer;
4. Attachment D - Certified Copy of Civil Docket and Case Ledger;
5. Attachment E - List of Parties and Counsel; and
6. Attachment F - State Court Information Sheet.

The documents attached hereto as Attachment "A" through "C" comprise true and correct copies of all executed process and pleadings served upon Defendant and of all documents filed in the state court action.

In filing this Notice of Removal, Defendant expressly reserves all other questions other than that of removal, for the purpose of further pleadings.

I.
STATE COURT ACTION

Plaintiff's Original Petition, styled *Mirta Negrete vs. Walmart Stores Texas, L.L.C.*, Cause No. E-200,423, was filed on July 25, 2017, in Jefferson County, Texas, and assigned to the 172nd Judicial District Court of Jefferson County, Texas, located at 1001 Pearl Street, Beaumont TX 77701

II.
PLAINTIFF'S ALLEGATIONS

Plaintiff alleges that on or about August 24, 2015, she was a customer at the Walmart store located at 8585 Memorial Blvd. in Port Arthur, Jefferson County, Texas. *See Exhibit "A" - Plaintiff's Original Petition*, at § V. Plaintiff alleges that she suffered "*serious injuries and damages*" when she fell due to a puddled water on the floor. *Id.* Plaintiff alleges that Defendant was guilty of various acts, wrongs and omissions each of which constituted negligence, and that such negligence was a proximate cause of the injuries and damages alleged by Plaintiff. *Id.* at VI. Plaintiff alleges that Defendant owed a duty to the general public, including Plaintiff, to use ordinary care, including the duty to protect and safeguard from unreasonably dangerous conditions on the premises or to warn of their existence. *Id.* Plaintiff alleges that on the occasion in question she was an invitee. *Id.* Plaintiff further alleges that Defendant owed her a duty to exercise ordinary care to keep the premises in a reasonably safe condition, inspect the

premises to discover latent defects, and to make safe any defects or give an adequate warning of any dangers. *Id.* Plaintiff alleges that Defendant's conduct and that of its agents, servants and employees, acting within the scope of their employment, constituted a breach of the duty of ordinary care owed by Defendant to Plaintiff. *Id.* Plaintiff alleges that the Defendant knew or should have known the conditions in its retail area created an unreasonable risk of harm to invitees, in that Defendant knew or should have known of the danger of customers falling due to the dangerous condition. *Id.* Plaintiff further alleges that Defendant's negligence is a proximate result of Plaintiff's injuries. *Id.*

III.
PARTIES - DIVERSITY OF CITIZENSHIP

Plaintiff, Mirta Negrete, is a resident of Port Arthur, Jefferson County, Texas.

Defendant, Walmart Stores Texas, LLC, is a Delaware limited liability company, and is an indirectly, wholly-owned subsidiary of Wal-Mart Stores, Inc. The sole member of Walmart Stores Texas, LLC, is Walmart Real Estate Business Trust. The sole unit holder of Walmart Real Estate Business Trust is Walmart Property Co. which is a wholly owned subsidiary of Walmart Stores East, LP. Walmart Stores East, LP, a Delaware limited partnership, of which WSE Management, LLC, is the general partner, and WSE Investment, LLC, is the limited partner. The sole member of WSE Management, LLC, and WSE Investment, LLC, is Walmart Stores East, LLC (fka Walmart Stores East, Inc.), whose parent company is Walmart Stores, Inc.. The principal place of business of Walmart Stores Texas, LLC, is Bentonville, Arkansas. Walmart Stores, Inc., is a Delaware corporation with its principal place of business in Arkansas. Accordingly, there is complete diversity of citizenship between Plaintiff and the Defendant. 28 U.S.C. §§ 1332, 1441.

IV.
AMOUNT IN CONTROVERSY

The state court action is one over which this Court has original jurisdiction under the provisions of 28 U.S.C. § 1332 since it is a civil action wherein the matter in controversy as alleged in Plaintiff's Petition exceeds the minimum jurisdictional limits of this Court exclusive of interest and costs and is between citizens of different states.

In her Petition, Plaintiff specifically pleads damages over \$100,000 but not more than \$200,000. *See Exhibit A at § II.* Plaintiff further alleges that she sustained “*serious injuries and damages*” as a result of the accident made the basis of this lawsuit. *See Exhibit A at § V.* Furthermore, Plaintiff contends that she “*suffered with severe and debilitating pain and injury to her left knee, with limited range of motion, muscle spasms, and soreness to the body in general.*” *Id.* at § VII. Plaintiff also contends in Section VII of her Petition that as a result of such alleged injuries, “*she has suffered the following:*

- (1) Reasonable medical expenses in the past;
- (2) Reasonable medical expenses in the future;
- (3) Loss of earnings and earning capacity in the past;
- (4) Loss of earnings and earning capacity in the future;
- (5) Physical impairment in the past;
- (6) Physical impairment in the future;
- (7) Physical pain in the past;
- (8) Physical pain in the future;
- (9) Mental anguish in the past;
- (10) Mental anguish in the future;
- (11) Disfigurement in the past;

(12) Disfigurement in the future; *Id.* § VII.

Plaintiff's pleadings assert an amount in controversy that exceeds the Court's minimum jurisdictional limits. *Id.* at § II. In view of the nature of the claims and alleged damages sought, Defendant has established that the alleged amount in controversy is sufficient to confer federal jurisdiction in this Court. For the reasons stated above, this Court has original jurisdiction of this case pursuant to 28 U.S.C. §1332(a).

V.
REMOVAL IS TIMELY

Removal is timely. Defendant, Walmart Stores Texas, LLC, was served with Plaintiff's Original Petition on July 31, 2017. As such, service on Defendant has been less than 30 days from filing this Notice of Removal. *See* 28 U.S.C. § 1446(b).

VI.
VENUE

This is a statutorily proper venue under the provisions of 28 U.S.C. § 1441(a) because the district and division embrace the place where the removed action has been pending.

VII.
FILING WITH STATE COURT AND NOTICE TO PLAINTIFF

Upon filing of this Notice of Removal of the cause, Defendant gave written notice of the filing to the Plaintiff through Plaintiff's counsel as required by law. A copy of this Notice is also being filed with the 172nd Judicial District Court of Jefferson County, Texas, where this cause was originally filed. A copy of all processes, pleadings, and orders has been filed separately with this Court pursuant to 28 U.S.C. § 1446(a).

VIII.
PRAYER

WHEREFORE, PREMISES CONSIDERED, DEFENDANT, WALMART STORES TEXAS, LLC, prays that the United States District Court for the Eastern District of Texas, Beaumont Division, accept this Notice of Removal and assume jurisdiction of this matter and issue any orders and processes necessary to bring PLAINTIFF, MIRTA NEGRETE, and DEFENDANT, WALMART STORES TEXAS, L.L.C., before it, and to effectively prevent further proceedings of this case in the 172nd Judicial District Court of Jefferson County, Texas.

Respectfully submitted,

PATE & SPIVEY, L.L.P.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Removal has been forwarded to opposing counsel of record on this 24TH day of August, 2017, in accordance with the Federal Rules of Civil Procedure by certified mail, addressed as follows:

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